

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:

**Amendment of 47 CFR §73.202(b)
Table of FM Allotments
(Hatfield, Arkansas)**

To: The Chief, Allocations Branch
Policy & Rules Division

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REPLY COMMENTS OF JOHN HARLE

John Harle, pursuant to Section 1.415 of the Commission's Rules (47 CFR §1.415) and ¶5 of the *Notice of Proposed Rule Making*, DA 95-1278 (released June 27, 1995) ("NPRM") respectfully submits these Reply Comments in response to the Comments of Max Pearson, submitted August 18, 1995. In support of this Reply, the following is shown:

Preliminary Statement

1. On August 18, 1995, Max Pearson submitted his comments in response to the NPRM released on June 27, 1995 in the above captioned proceeding. In those comments, Mr. Pearson opposed amending §202(b) of the Commission's rules, FM Table of Allotments. The proposed amendment would allot Channel 281C2 to the community of Hatfield, Arkansas. Presently, the community is not served by an aural broadcast service. Because the Hatfield community is only ten miles from the City of Mena, and because the area covered by the proposed broadcast service would place a strong signal in Mena, Mr. Pearson is concerned at the prospect of further competition in the market. Mr. Pearson's arguments run to Hatfield's cognizability as a community and to an assertion based on economic grounds that allotment of a channel to Hatfield would not be a fair or effective use of the radio spectrum. It will be shown not only that Mr. Pearson's case against the cognizability of Hatfield as a community has no merit, but that under the Commission's policies¹ and the rulings of the Federal Courts, *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 473 (1940), Mr. Pearson's economic arguments have no place in the decision making process to allocate a channel to a particular city. Therefore, because Mr. Pearson has failed to articulate a meritorious argument opposing the petition and because Mr. Harle's petition has otherwise complied with Commission policies, Mr. Harle respectfully requests

¹Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, ¶ 29.

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that the Commission amend the FM Table of Allotments to include a channel 281C2 for Hatfield, Arkansas.

***Hatfield, Arkansas is a cognizable community
under the Commission's policies***

The information regarding Hatfield's existence as a cognizable community is readily available, and Mr. Harle may therefore have inadvertently left documentation out of the original petition. However, because Mr. Pearson raises this issue, Mr. Harle has included in this reply documentation from the US Census Bureau showing that Hatfield is a community for purposes of the Census.²

Hatfield is also an incorporated town according to the Arkansas Secretary of State.³

The Commission does not require further showings than that a community appear in the US Census and that it be incorporated.⁴ In light of this standard, Mr. Pearson's arguments that "Hatfield is hardly a 'city'", have no merit. It is of no importance that Hatfield is a small community. The fact remains that it is a community, and is deserving of its own local broadcast outlet.

Allotment of a C-2 Channel to Hatfield is consistent with 47 USC §307B

Mr. Pearson asserts that allotment of a Class C-2 facility would not be a fair, efficient or effective use of the radio spectrum as required by Section 307(b) of the *Communications Act*. However, Mr. Pearson offers no evidence to support this assertion other than a presumption, gleaned from the original petition, that the Hatfield rule making is a simple attempt to allot a third FM to Mena, Arkansas. Whether this is true or not is simply irrelevant to this proceeding at this time.⁵

² See attached report *1990 US Census Data*, Hatfield, Arkansas.

³ John Harle, personal conversation with Barbara Robinson of the Arkansas Secretary of State's office, Election and Ethics Division.

⁴ *Gretna, Florida, et.al.*, 6 FCCR 633, 68 RR 2d 1358 ¶5 ("The Commission's policy is that, if a community is not incorporated or listed in the census reports, the proponents of an allotment must show the place to be a geographically identifiable population grouping."); 90 FCC2d 88, ¶¶31 (...[I]n cases where the place's status as a community is clear, we thought there should be no need to submit demographic data at all.) & 34 (For [purposes of §307(b)] it is sufficient that the community is incorporated or is listed in the census.).

⁵ 90 FCC 2d 88, ¶ 37 (...[W]e do not believe it is appropriate to question the intent of the party seeking an assignment to a particular community in the rule making process.").

The upshot of Mr. Pearson's argument is that the addition of one more station to the Mena market will make the other stations less profitable, and therefore is not in the public interest. However, Mr. Pearson recognizes that competition and economic hardship to existing broadcasters is not generally considered in an allocation process.⁶ As the Supreme Court has said in *Sander Brothers*, 309 US 470, 473, "...resulting economic injury to a rival station is not **in and of itself and apart from considerations of public convenience, interest, or necessity**, an element the [Commission] must weigh and as to which it must make findings in passing on an application for a broadcast license." [emphasis added]. The Court of Appeals interpreted this rule in *Carroll Broadcasting Co. v. FCC*, 258 F.2d 440; 103 US App.D.C. 346,443; 349 to mean that economic hardship becomes an issue only when issuance of a license to a second broadcast outlet would cause both of two stations in an area to render inadequate service to that area. Thus, in this limited situation, issuance of the second license would not "provide a fair, efficient, or equitable distribution of radio service to each" licensee. 47 USC 307(b). It seems that with three existing stations and one proposed station, that there is no danger of the public becoming inadequately served due to the economic competition of two of those stations. It is also Mr. Harle's belief, based on his knowledge of the area that the benefit to the public in the form of having a true programming choice in the area far outweighs the speculative harm that might occur with economic competition between Mr. Harle's and Mr. Pearson's respective stations.

Conclusion

Hatfield, Arkansas is a cognizable community for allocation purposes under the Commission's rules. It is listed in the 1990 US census and is incorporated under the laws of the State of Arkansas. Because these two indicators are met, the Commission does not require further demographic data to support the allotment of C2 FM station to the community. Furthermore, Mr. Pearson has failed to show that allotment of channel 281C2 to Hatfield would not be a fair, efficient or effective use of the radio spectrum.

Therefore, the petitioner respectfully urges that the Commission amend Section 73.202(b) of the Rules, FM Table of Allotments to add Channel 281C2 to Hatfield, Arkansas.

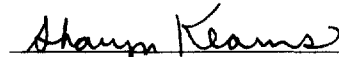
⁶*Comments of Max Pearson, ¶ 7*

Respectfully submitted,



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Subscribed and sworn before me, a notary public, this 29 day of August, 1995.


Notary Public



1990 US Census Data
URL: <http://www.census.gov/cdrom/lookup>
Database: C90STF3A
Summary Level: State--Place

Hatfield town: FIPS.STATE=05, FIPS.PLACE90=30700

100-PERCENT COUNT OF PERSONS

Universe: Persons

Total.....414

FAMILIES

Universe: Families

Total.....116

HOUSEHOLDS

Universe: Households

Total.....161

URBAN AND RURAL

Universe: Persons

Urban:

 Inside urbanized area.....0

 Outside urbanized area.....0

Rural:

 Farm.....14

 Nonfarm.....364

SEX

Universe: Persons

Male.....176

Female.....202

RACE

Universe: Persons

White.....378

Black.....0

American Indian, Eskimo, or Aleut.....0

Asian or Pacific Islander.....0

Other race.....0

PERSONS IN HOUSEHOLD

Universe: Households

1 person.....45

2 persons.....61

3 persons.....29

4 persons.....17

5 persons.....9

6 persons.....0

7 or more persons.....0

HOUSEHOLD TYPE AND RELATIONSHIP

Universe: Persons

In family households:


Householder.....	116
Spouse.....	103
Child:	
Natural-born or adopted.....	99
Step.....	9
Grandchild.....	1
Other relatives.....	2
Nonrelatives.....	3
In nonfamily households:	
Male householder:	
Living alone.....	8
Not living alone.....	0
Female householder:	
Living alone.....	37
Not living alone.....	0
Nonrelatives.....	0
In group quarters:	
Institutionalized persons.....	0
Other persons in group quarters.....	0

CERTIFICATE OF SERVICE

I, John B. Harle, hereby certify that I have on this 29th day of August, caused to be sent, by United States Mail, postage prepaid, copies of the foregoing, **"Reply of John B. Harle"** to the following:

Max H. Pearson
c/o Putbrese & Hunsaker
6800 Fleetwood Road, Ste 100
McLean, Virginia 22101-0539

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2025 M Street, NW, Room 8322
Washington, DC 20554



John B. Harle

* Courtesy Copy

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